

AMENDMENTS TO THE DRAWINGS

Please amend Figs. 6a-6d as shown in the attached replacement sheets of such figures.

REMARKS/ARGUMENTS

Claims 33-35, 39, 62, 63 and 71-106 are pending. By this Amendment, claims 21-32, 36-38, 40-61 and 64-70 are cancelled without prejudice or disclaimer; Figs. 6a-6d and the specification are amended; and claims 71-106 are added. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

Claims 39, 62 and 63 were rejected under 35 U.S.C. § 103(a) over Rudolph. (U.S. Patent 6,192,886). The rejection is respectfully traversed.

The rejection of claim 39 is addressed below in response to the rejection of claim 40.

It is respectfully submitted that the rejection of claims 62 and 63 fails to establish a *prima facie* case of obviousness for several reasons.

Firstly, it is respectfully noted that claims 62 and 63 have been grouped with the rejection of claims 21, 27-32, 39, 41, 47, 48, 51, 60, and 63-70, which is clearly improper under MPEP § 707.07(d), which states:

A plurality of claims should never be grouped together in a common rejection, unless that rejection is equally applicable to all claims in the group.

Claims 62 and 63 clearly recite features that are not recited in claims 31, 27-32, 39, 41, 47, 48, 51, 60, and 63-70, and vice versa. For example, each of claim 62 and 63 recites, *inter alia*, with respect to each of the second connector portions, that outward end portions of the base wall member and the opposing wall structures define a generally C-shaped laterally facing surface contained within a single plane. This feature is not recited in the other claims grouped with claims 62 and 63.

Secondly, it is respectfully noted that the Office Action does not identify any structure of Rudolph that allegedly corresponds to the features discussed above with respect to claims 62 and 63, as is required by 37 C.F.R. § 1.104(c)(2), which states:

In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.

Thirdly, it is respectfully submitted that the Examiner's reliance on the rationale used by the court in In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950), is improper and fails to cure the deficiencies of Rudolph.

MPEP 2144.04 states:

[I]f the facts in a prior legal decision are sufficiently similar to those in an application under examination, the examiner may use the rationale used by the court. Examples directed to various common practices which the court has held normally require only ordinary skill in the art and hence are considered routine expedients are discussed below. If the applicant has demonstrated the criticality of a specific limitation, it would not be appropriate to rely solely on case law as the rationale to support an obviousness rejection.

As noted in MPEP § 2144.04 VI.C., In re Japikse involved claims to a hydraulic power press which read on the prior art except with regard to the position of the starting switch. The claims were held unpatentable because shifting the position of the starting switch would not have modified the operation of the device. Moreover, as that section of the MPEP further notes, the mere fact that a worker in the art could rearrange the parts of the reference device to meet the terms of the claims is not by itself sufficient to support a finding of obviousness. The prior art must provide a motivation or reason for the worker in the art, without the benefit of Applicants' specification, to make the necessary changes in the reference device (citing to Ex parte Chicago Rawhide Mfg. Co., 223 USPQ 351, 353 (Bd. Pat. App. & Inter. 1984)).

It is respectfully submitting that switching the strap securement buttons 90 (male connectors) formed on the nasal cup 13 (the mask frame) to female connectors, and switching the button receiving aperture 93 of the strap fasteners 10 (the female connectors) to male connectors would modify the operation of the nasal mask of Rudolph.

Rudolph discloses that one of the objectives of his invention is to provide a nasal cup formed from flexible material. See column 2, lines 38-39. Rudolph further discloses that the strap securement buttons 90 are integrally formed on the outer surface of the nasal cup 13 and the strap fasteners 10 are secured to a respective button by pressing the flexible button 90 through a respective button receiving aperture 93 in the fastener 10. Therefore, the formation of the strap securement buttons 90 (i.e. male connectors) on the nasal cup 13 is necessary for Rudolph to achieve his objective of a flexible nasal cup. One of ordinary skill in the art would have no reason to change the male connectors (buttons 90) formed on the nasal cup 13 to female connectors, as proposed in the Office Action. Furthermore, changing the male connectors (buttons 90) of Rudolph to female connectors would clearly modify the operation of the mask of Rudolph, which is clearly different from the facts of In re Japikse in which the modification did not modify the operation of the device.

As the facts of In re Japikse are not sufficiently similar to the facts of the instant application, the Examiner may not rely on the court's rationale to establish a *prima facie* case of obviousness.

Fourthly, claim 62 recites, *inter alia*, that each of the first connector portions has one of a resiliently biased locking element and a locking element receiving aperture and 63 recites, *inter alia*, resiliently biased locking elements being movable between deflected and undeflected positions and being resiliently biased toward the undeflected position. Neither of these features, at least, is disclosed by Rudolph, nor does the Office Action provide any indication of where such features may be found in Rudolph, as required by 37 C.F.R. § 1.104(c)(2).

Reconsideration and withdrawal of the rejection of claims 62 and 63 are respectfully requested.

Claims 33 and 40 were rejected under 35 U.S.C. §103(a) over Rudolph in view of Ferrero et al. (U.S. Patent 5,657,493). The rejection is respectfully traversed.

The Office Action on page 4, paragraph 5, acknowledges that Rudolph does not disclose or suggest a cantilevered member as recited in claim 33. The Office Action then concludes that Ferrero et al. teach the use of a male connector in combination with a female connector wherein the male connector has a cantilevered member, which the Office Action equates with the combination of the first/male coupling portion 30 and the strap retaining portion 36 of Ferrero et al.

It is respectfully submitted that Ferrero et al. fails to cure the deficiencies of Rudolph with respect to claim 33. In particular, it is respectfully submitted that Ferrero et al. do not disclose or suggest a cantilevered member as recited in claim 33. It is also respectfully submitted that the combination of Rudolph and Ferrero et al. fails to disclose other features of the invention recited in claim 33.

Claim 33 recites a respiratory mask assembly comprising a headgear structure including at least one strap portion having an end; a male connector portion attached to the end of the at least one strap portion, the male connector portion including a trailing portion that has a pair of spaced side portions and a cross bar extending transversely therebetween, the male connector portion also including a leading portion that has a pair of longitudinally extending side beams spaced slightly inwardly from the side portions, the leading portion including a cross piece extending between the side beams and defining a leading edge of the male connector portion, the leading portion of the male connector portion also including a cantilevered member extending from an intermediate portion of the cross piece toward the trailing portion of the male connector portion, the cantilevered member being movable between deflected and undeflected positions and being resiliently biased toward the undeflected position, the cantilevered member including a locking element extending outwardly therefrom, the locking element being positioned on the

cantilevered member generally spaced from the cross piece, the leading portion of the male connector portion including a ridge structure adjacent the trailing portion and extending generally perpendicularly relative to the side beams; a mask frame; and a female connector portion secured to the mask frame and being configured to receive the male connector portion therein.

Rudolph discloses a nasal mask having a flexible cap 8 having a plurality of adjustable straps 9 connected to a nasal mask assembly 1 using a plurality of strap fasteners 10. The strap fasteners 10 include a button receiving aperture 93 and a strap receiving slot 94. The strap fasteners 10 are secured to a respective button 90 by pressing the flexible button 90 through a respective button receiving aperture 93 in the fastener.

Rudolph does not disclose or suggest a male connector portion as recited in claim 33. Rudolph does not disclose or suggest a male connector portion including a trailing portion that has a pair of spaced side portions and a cross bar extending transversely therebetween. Rudolph also does not disclose or suggest a male connector portion including a leading portion that has a pair of longitudinally extending side beams spaced slightly inwardly from the side portions, the leading portion including a cross piece extending between the side beams and defining a leading edge of the male connector portion. Rudolph does not disclose or suggest a male connector portion having a leading portion also including a cantilevered member extending from an intermediate portion of the cross piece toward the trailing portion of the male connector portion, the cantilevered member being movable between deflected and undeflected positions and being resiliently biased toward the undeflected position, the cantilevered member including a locking element extending outwardly therefrom, the locking element being positioned on the cantilevered member generally spaced from the cross piece. Rudolph further fails to disclose or suggest a

leading portion of a male connector portion including a ridge structure adjacent the trailing portion and extending generally perpendicularly relative to the side beams.

Ferrero et al. do not cure any of the deficiencies of Rudolph discussed above with respect to claim 33. For example, the Office Action identifies the leading end of the male coupling portion 30 of Ferrero et al. as the portion containing the guide arm 44. However, it is respectfully noted that this so-called leading end of Ferrero et al. does not include a crosspiece from which a cantilevered member extends.

It is also respectfully submitted that the strap retaining portion 36 of the first coupling portion 30 of Ferrero et al. does not correspond to the cantilevered member of claim 33. There is no disclosure or suggestion by Ferrero et al. that the strap retaining portion is movable between deflected and undeflected positions and is resiliently biased toward the undeflected position. As also discussed above, the strap retaining portion 36 does not extend from an intermediate portion of a crosspiece extending between side beams.

The Office Action on page 5, lines 1-2, also states that the latch member or keeper tooth 58 of Ferrero et al. correspond to the locking element of claim 33. Applicants respectfully disagree. The latch member or keeper tooth 58 of Ferrero et al. is not positioned on a cantilevered member generally spaced from a crosspiece that extends between side beams. Accordingly, the latch member or keeper tooth 58 does not correspond to the locking element of claim 33.

As the combination of Rudolph and Ferrero et al. fails to include all of the features recited in claim 33, the combination fails to present a *prima facie* case of obviousness.

The subject matter of claim 40 has been incorporated into independent claim 39. The following arguments regarding claim 39 are therefore applicable to the rejection of claim 40 over the combination of Rudolph and Ferrero et al.

Claim 39 recites, *inter alia*, a male connector including a resiliently biased cantilever member depending from a leading end portion of the male connector and being lockable with a female connector. As the Office Action acknowledges that Rudolph does not disclose or suggest a cantilevered member, and as Ferrero et al. fail to cure the deficiencies of Rudolph, even assuming it would have been obvious to combine the references, which Applicants do not concede, such a combination would not include all the features of claim 39 and would not present a *prima facie* case of obviousness.

Claims 71-86 recite additional features of the invention and are allowable for the same reasons discussed above with respect to claim 33 and for the additional features recited therein.

Reconsideration and withdrawal of the rejection of claims 33 and 39 over Rudolph in view of Ferrero et al. are respectfully requested.

Claim 87 recites a headgear for a respiratory mask assembly comprising a male connector portion having features similar to those discussed above with respect to claim 33. Claim 87 and dependent claims 88-98 are allowable.

Claims 99-106 recite features not disclosed or suggested by Rudolph or Ferrero et al., alone or in combination.

In view of the above amendments and remarks, Applicants respectfully submit that all the claims are patentable and that the entire application is in condition for allowance.

Should the Examiner believe that anything further is desirable to place the application in better condition for allowance, she is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: /John P. Darling/
John P. Darling
Reg. No. 44,482

JPD:tlm
Attachment:
Replacement Sheets (Figs. 6a-6d)

901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100